

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

THOMAS MANN, et al.,

Plaintiffs,

v.

JRK PROPERTY HOLDINGS, INC., et  
al.,

Defendants.

CASE NO. C18-5391 RBL

ORDER

THIS MATTER is before the Court on Defendant JRK's Motion to Dismiss. Plaintiffs Mann and Williams leased an apartment from JRK and vacated before the lease expired, because, they claimed, the apartment was uninhabitable. In 2016, they sued in Pierce County and prevailed. JRK satisfied the \$5029 District Court (final) judgment. Almost two years later, Mann and Williams sued in Pierce County again, asserting additional claims arising out of their tenancy, and seeking additional damages. JRK timely and properly removed the case here. It seeks dismissal on *res judicata* grounds, arguing that plaintiffs could (and should) have asserted their claims in the prior case—all of the claims arise out of the lease and the tenancy, and the parties are the same.

1 Mann and Williams have not responded to the motion, and the time for doing so has long  
2 passed.

3 Under *res judicata*, “a final judgment on the merits of an action precludes the parties or  
4 their privies from re-litigating issues that were or could have been raised in that action.” *Allen v.*  
5 *McCurry*, 449 U.S. 90, 94 (1980). The doctrine of *res judicata* bars a party from re-filing a case  
6 where three elements are met: (1) identity of claims; (2) final judgment on the merits; and (3)  
7 identity or privity between parties. *Frank v. United Airlines, Inc.*, 216 F.3d 845, 850, n. 4 (9th  
8 Cir. 2000); *Thompson v. King Co.*, 163 Wash. App. 184 (2011).

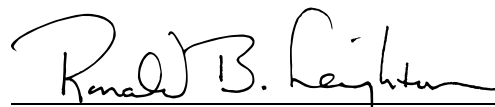
9 Under Local Rule 7(b)(2), a party’s failure to respond to a motion to dismiss can be  
10 deemed by the court an admission that the motion has merit:

11 (2) *Obligation of Opponent*. Each party opposing the motion shall, within the time  
12 prescribed in LCR 7(d), file with the clerk, and serve on each party that has appeared  
13 in the action, a brief in opposition to the motion, together with any supporting  
14 material of the type described in subsection (1). Except for motions for summary  
15 judgment, if a party fails to file papers in opposition to a motion, such failure may be  
16 considered by the court as an admission that the motion has merit.

17 The Motions *do* have merit, and the Plaintiffs’ failure to respond in any fashion to them is an  
18 admission of the same. For that reason, and for the reasons outlined in the Motion itself, the motion  
19 is GRANTED and all of claims Plaintiffs’ claims are DISMISSED with prejudice and without leave  
20 to amend.

21 IT IS SO ORDERED.

22 Dated this 23<sup>rd</sup> day of July, 2018.

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Ronald B. Leighton  
United States District Judge